

REMARKS

Claims 1-15 and 20-33 are pending in the application.

Claims 1-14 and 20-32 have been rejected.

Claims 15 and 33 are objected to.

Claims 1 and 20 have been amended, as set forth herein.

I. **REJECTION UNDER 35 U.S.C. § 102**

Claims 1 and 20 were rejected under 35 U.S.C. § 102(e) as being anticipated by Dault (US 5,912,894). The rejection is respectfully traversed.

A cited prior art reference anticipates the claimed invention under 35 U.S.C. § 102 only if every element of a claimed invention is identically shown in that single reference, arranged as they are in the claims. MPEP § 2131; *In re Bond*, 910 F.2d 831, 832, 15 U.S.P.Q.2d 1566, 1567 (Fed. Cir. 1990). Anticipation is only shown where each and every limitation of the claimed invention is found in a single cited prior art reference. MPEP § 2131; *In re Donohue*, 766 F.2d 531, 534, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Dault describes adjusting the communication bandwidth assigned to an audio channel connection in a high speed digital network. Dault, Abstract. Activity on the audio channel is examined (typically in short blocks of signal samples 20 ms long). Dault, Col. 5, lines 46-53. Based on the detected activity, the assigned bandwidth for that audio channel within the high speed digital network may be dynamically changed (e.g., 0 Kbps, 7 Kbps, 13 Kbps, 64 Kbps). Dault, Col. 7, lines

1-12; 53-57. The amount of bandwidth assigned to the specific audio channel is changed as a result of the activity on the channel.

Notably, Dault's audio channel activity detection occurs at the entry point of the high speed digital network (to which the audio device is connected). Dault, Col. 7, lines 13-30. Dault's examination of a parameter associated with the audio data packets (of the audio channel) occurs prior to transmission or transportation of the audio data packets across the high speed network. Examination of specific activity within a single audio channel at the source (prior to transmission into the network) does not appear to provide any indication or information about the network's overall performance. Thus, Dault's measurement/examination of the audio packets (at the source) fails to provide any measure of the high-speed network's overall performance. In addition, increasing the reserved bandwidth for an audio channel (based on detected activity) may increase congestion in the network - as more bandwidth is required for the higher bandwidth.

In distinct contrast, Applicant's Claims 1 and 20 recite measuring (or a mechanism for measuring) a parameter associated with a data packet that has been transported across the network. Such measurement is useful in determining the network performance. When the measured parameter differs from a predetermined value, this provides an indication the network performance may be congested. Applicant's claimed invention enables optimization of the network bandwidth to maintain a QoS level in the network. See, generally, Claims 1 and 20. Thus, Applicant's parameter (and the measuring of the parameter) provides some information about the effects of network performance on the data packet transported across the network.

Though Applicant believes that independent Claims 1 and 20 sufficiently point out and describe that the parameter is a “parameter associated with a data packet transported across the network”, to further prosecution Applicant has amended the claims to include measuring the parameter (or a measuring parameter for measuring the parameter) after the data packet is transported across the network. Thus, Dault fails to disclose this feature/element.

Accordingly, the Applicant respectfully requests the Examiner withdraw the § 102(e) rejection of Claims 1 and 20.

II. REJECTIONS UNDER 35 U.S.C. § 103

Claims 1 and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ma (US Patent No. 5,953,338) in view of Daniel (US Patent No. 5,726,985). Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Ma (US Patent No. 5,953,338) in view of Daniel (US Patent No. 5,726,985) and Thorson (US Patent No. 4,440,986). Claims 3, 6-8, 21 and 24-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ma (US Patent No. 5,953,338) in view of Daniel (US Patent No. 5,726,985) and further in view of Yamato (US Patent No. 5,694,390). Claims 4-5 and 22-23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ma (US Patent No. 5,953,338) in view of Daniel (US Patent No. 5,726,985) and further in view of Campbell (US Patent 2003/0140159). Claims 9-13 and 27-31 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ma (US Patent No. 5,953,338) in view of Daniel (US Patent No. 5,726,985) and Yamato (US Patent No. 5,694,390) in further view of Geagan III (US Patent No. 6,263,371). Claims

14 and 32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ma (US Patent No. 5,953,338) in view of Daniel (US Patent No. 5,726,985) and Yamato (US Patent No. 5,694,390) and Geagan (US Patent No. 6,263,371) and in further view of Thorson (US Patent No. 4,440,98). The rejection is respectfully traversed.

Applicant submits herewith a Declaration of Prior Invention Under 37 CFR 1.131 which establishes Applicant's invention prior to the issue date of US Patent No. 5,953,338 (the Ma reference). As a result, the Ma reference is unavailable as Section 102(a) prior art for Section 103(a) purposes, and the Ma reference appears to only qualify as prior art under Section 102(e).

Applicant further notes the Ma reference, which forms the basis of all 103(a) rejections, is assigned to Nortel Networks, Ltd.

Section 103(c)(1) provides that:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Title 35, United States Code, § 103(c)(1). See also, MPEP § 2146.

The present application is owned by Nortel Networks Ltd, as evidenced by documents recorded at Reel/Frame 010612/0692 (assignment from the inventors to Nortel Networks Corporation) and Reel/Frame 011195/0706 (name change from Nortel Networks Corporation to Nortel Networks, Ltd). Issued US Patent No. 5,953,338 to Ma is also owned by Nortel Networks, Ltd., as evidenced by documents recorded at Reel/Frame 08843/0526 (assignment from the inventors

to Northern Telecom Limited) and Reel/Frame 010255/0838 and 010567/0001 (name change from Northern Telecom Limited to Nortel Networks Corporation) and Reel/Frame 011195/0706 (name change from Nortel Networks Corporation to Nortel Networks, Ltd). The present application and the cited reference were, at the time the claimed invention was made, owned by, or subject to an obligation of assignment to, the same person. The Ma reference is unavailable as prior art under section 103(a), and the Office Action fails to establish a prima facie case of obviousness.

Accordingly, the Applicant respectfully requests withdrawal of all the § 103(a) rejections of Claims 1-14 and 16-32.

III. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.


If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *rmccutcheon@munckbutrus.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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